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Federal Election Commission
Attn: Amanda Andrade
1050 First Street NE Washington, DC 20463

VIA E-MAIL: aandrade@fec.gov

Re: MUR 7577 (Ander PAC) Reason to Believe Finding and Conciliation Agreement

We write on behalf of Ander PAC and Benjamin Ottenhoff, in his official capacity as Treasurer (collectively “the Respondents”), in response to the Commission’s determination that there is “reason to believe” that Ander PAC converted campaign funds for Representative Ander Crenshaw’s personal use. We maintain our position that the contested disbursements made by Respondents were not for personal use, but rather for the legitimate political purposes of either Crenshaw for Congress or Ander PAC. To be clear, it is impossible draw principled distinctions between their political spending at issue here and the day-to-day spending of hundreds of other leadership PACs. However, due to the Respondents’ limited financial resources and their desire to avoid further legal fees involved in litigation to defend their position, Respondents have agreed to enter into pre-probable cause conciliation with the Commission and pay a civil penalty to the Commission.

We have reviewed the Commission’s rationale for finding “reason to believe” against Respondents, and where there is any sort of even attempted statutory analysis we have several concerns with it. First, we are confused by the Commission’s supposed application of the “irrespective test” to certain Ander PAC transactions. The Commission’s Factual and Legal Analysis (F&LA) continually references the amount raised by Ander PAC (\$450) versus the amount spent (over \$62,000) as the sole rationale for concluding that certain transactions could not have been “ordinary and necessary expenses” for the PAC. This quantitative spending analysis is not relevant to the “irrespective test” and there is absolutely *zero* precedent for determining personal use in this manner. We are interested to see any sort of explanation regarding what the Commission’s basis is for using this approach to the “irrespective test,” as the Commission has failed to provide any substantive guidance on how the personal use regulations applies to former candidates or officeholders.¹ Second, we have due process concerns with the Commission’s

¹ While the F&LA attempts to respond to this contention by claiming that the Commission has previously sought comments on a rulemaking petition to revise and amend 11 C.F.R. §§ 113.1(g) and 113.2 to clarify the permissible use of campaign funds for former candidates and office, we have a hard time figuring out how this

retroactive application of MUR 7292 (Stearns) to the facts here. As the Commission is well aware, MUR 7292 was decided *over two years* after the transactions at issue occurred. The Respondents, when engaging in this activity, acted with good faith and in reliance on the guidance and precedent from the Commission *at the time the activity was being conducted*. There was no Commission determination at that time that Representative Crenshaw's travel, meal expenses, and dues constituted personal use. Applying MUR 7292 ex-post facto to the Respondents is creating dangerous precedent for future respondents, in that they may be subject to Commission investigations and/or civil penalties based *solely* on future Commission determinations.

We respectfully ask that this submission be added to file for MUR 7577 and that the Commissioners consider our concerns when conciliating regarding the final language and civil penalty amount here.

Respectfully submitted,



Charlie Spies
Katie Reynolds
Counsel to Ander PAC

adequately responds to our concerns. In fact, all it does is solidify our position that there is no guidance on this issue. Given that the Commission petitioned for a rulemaking on this issue, it shows that there is a general consensus among Commissioners to address this issue. Additionally, a petition for a rulemaking on this issue does not, in and of itself, provide any guidance.